

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,
4 v.

5 LUCIO CELLI,

6 Defendant.

E.D.N.Y.
19-CR-127(PAE) (VJ)
21-SD-2656(PAE)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
Plea

New York, N.Y.
MAY 7, 2021
10:00 a.m.

Before:

HON.

District Judge

APPEARANCES

AUDREY STRAUSS
United States Attorney for the
Southern District of New York
ANNA KARMIGIOS
JENNIFER SASSO
Assistant United States Attorney

BENJAMIN SILVERMAN
Attorney for Defendant

1 (In open court; case called)

2 THE DEPUTY CLERK: State your appearance for the
3 record.

4 MS. KARMIGIOS: Anna Karmigios and Jennifer Sasso for
5 the government. Good morning, your Honor.

6 MR. SILVERMAN: Good morning, your Honor. Benjamin
7 Silverman for Lucio Celli.

8 Good morning, Mr. Silverman.

9 And good morning to you, Mr. Celli.

10 THE DEFENDANT: Good morning.

11 THE COURT: Mr. Silverman, I am also informed that
12 Mr. Celli's mother is here.

13 MR. SILVERMAN: Yes, your Honor. Mr. Celli's mother,
14 Ms. Celli and my colleague Ms. Daffy are both seated in the
15 back.

16 THE COURT: Let me just welcome both of you and thank
17 you for being here today.

18 Mr. Silverman, I have been informed that your client
19 today wishes to plead guilty to the sole count --

20 One moment.

21 Mr. Smallman is going to get the line open.

22 (Pause)

23 THE COURT: I will note for the record that Mr.
24 Smallman has opened up the phone line to the public. So if
25 there are members of the public who wish to attend this

1 conference without exposing themselves to whatever risks might
2 be present with an in-person proceeding, they are able to do
3 so.

4 With that, Mr. Silverman, I understand that your
5 client wishes today to plead guilty to the sole count in the
6 indictment in this case pursuant to a plea agreement with the
7 government; is that correct?

8 MR. SILVERMAN: Yes, your Honor.

9 THE COURT: Mr. Celli; is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Counsel have handed up the plea agreement
12 and I am going to mark it as Government Exhibit 1. Later on in
13 this proceeding, I will have questions for the counsel and for
14 Mr. Celli about the agreement.

15 Before turning though to the plea allocution, I have a
16 couple of preliminary matters. The first is I just want to
17 make sure I understand a particular feature of the Eastern
18 District version plea agreement. It appears to me that as to
19 the guideline range, the government is setting out its view of
20 the guideline range; but unlike the plea agreements that are
21 customarily in this district, there is no agreement by the
22 defense as to what the guideline range is.

23 Am I reading the agreement correctly?

24 MS. KARMIGIOS: That's correct with respect to this
25 particular agreement, your Honor.

1 THE COURT: Very good.

2 Mr. Silverman, am I correct to understand the
3 agreement that way?

4 MR. SILVERMAN: Yes, your Honor.

5 THE COURT: The second issue I want to make up as a
6 preliminary matter involves the fact that we're having this
7 conference here in the Southern District of New York, not the
8 Eastern District of New York. In recent conferences in the
9 case, which have been in person, have been held with
10 everybody's consent. Here, I want to take an extra few moments
11 and just question all counsel.

12 First of all, just to confirm that all counsel consent
13 to this proceeding being occurring here in the Southern
14 District of York.

15 Government?

16 MS. KARMIGIOS: Yes, your Honor, we consent.

17 THE COURT: Defense?

18 MR. SILVERMAN: Yes, your Honor.

19 THE COURT: I want to put a few questions to Mr. Celli
20 and again just to confirm his consent to that.

21 Mr. Celli, I was informed only late yesterday of the
22 prospect of a guilty plea proceeding today, and I knew that we
23 would be able to arrange it this morning right away in my
24 courtroom in this court, and I had less certainty about whether
25 I would be able to do that in the Eastern District. It was on

1 on that account that I proposed that we do this here today.

2 It is important for me, though, to underscore for you
3 that have a right to have this guilty plea proceeding occur in
4 the Eastern District of the New York, which is where the
5 indictment was returned.

6 Do you understand that you have that right?

7 THE DEFENDANT: (Unintelligible).

8 THE COURT: I understand, but I am just asking you --

9 THE DEF: Yes.

10 THE COURT: -- if you understand?

11 And if you would prefer to have this proceeding occur
12 in that district, of course I will accommodate than and I would
13 schedule that proceeding for early as we could arrange time
14 next week.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand you are under no
18 obligation to have this plea proceeding occur in this district
19 as opposed to the Eastern District across the river; do you
20 understand that?

21 THE DEFENDANT: That's fine, sir.

22 THE COURT: I just want to make sure you understand.

23 THE DEFENDANT: Uh-huh.

24 THE COURT: Yes, you do?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you waive your right to have this
2 proceeding occur in the Eastern District and instead to have it
3 in the Southern District of New York?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: Government, need I inquire any further on
6 that subject?

7 MS. KARMIGIOS: No, your Honor. Thank you.

8 THE COURT: So, Mr. Celli, before I accept your guilty
9 plea, I am going to ask you certain questions so that I can
10 establish to my satisfaction that you wish to plead guilty
11 because you are guilty and not for some other reason. If you
12 don't understand any of my questions or if you would like
13 further opportunity to consult with Mr. Silverman, will you
14 please let me know?

15 THE DEFENDANT: Yes.

16 THE COURT: I know the answer to this question, but I
17 am obliged to ask. Are you able to speak and understand
18 English?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. Smallman, will you place the defendant
21 under oath.

22 (Defendant sworn)

23 THE COURT: Mr. Celli, do you understand that you are
24 now under oath and that if you answer any of my questions
25 falsely, your answers to my questions may be used against you

1 in another prosecution for perjury?

2 THE DEFENDANT: Yes.

3 THE COURT: What is your full name?

4 THE DEFENDANT: Lucio Celli.

5 THE COURT: How old are you, sir?

6 THE DEFENDANT: 45.

7 THE COURT: 45?

8 THE DEFENDANT: 45.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: High school.

11 THE COURT: What was the masters in?

12 THE DEFENDANT: Special ed.

13 THE COURT: Where was that?

14 THE DEFENDANT: Touro College.

15 THE COURT: I am going to ask you now some questions
16 that may seem personal, and some of these of course have been
17 covered by either proceedings in the case but I need to make a
18 clear record that I am assessing your competence to plead
19 today. So please forgive me if I am going over an area that we
20 covered before, but I need to do that here today.

21 Have you ever been treated or hospitalized for any
22 mental illness?

23 THE DEFENDANT: Yes.

24 THE COURT: Briefly tell me when and where.

25 THE DEFENDANT: I was diagnosed with PS -- PTSD and

1 anxiety.

2 THE COURT: How long ago was that approximately?

3 THE DEFENDANT: 2009.

4 THE COURT: Are you currently being treated for those
5 or any other mental health conditions?

6 THE DEFENDANT: Yes.

7 THE COURT: Does the treatment entail the use of my
8 medications?

9 THE DEFENDANT: Yes.

10 THE COURT: Do those medications interfere with your
11 ability to understand what is being said to you?

12 THE DEFENDANT: No.

13 THE COURT: Do they interfere with your ability to
14 reason?

15 THE DEFENDANT: No.

16 THE COURT: Do they interfere with your ability to
17 communicate?

18 THE DEFENDANT: No.

19 THE COURT: Other than what we've just covered about
20 mental health, are you now or have you recently been under the
21 care of a doctor or psychiatrist?

22 THE DEFENDANT: Yes.

23 THE COURT: Again, other than what we covered for
24 mental health, for what conditions?

25 THE DEFENDANT: PTSD and anxiety.

1 THE COURT: Other than for PTSD and anxiety, are you
2 now or have you recently been under the care of a doctor or a
3 psychiatrist?

4 THE DEFENDANT: Yes.

5 THE COURT: For what conditions?

6 THE DEFENDANT: PTSD and anxiety.

7 Oh, yes, diabetes and stuff like that.

8 THE COURT: Are you on medication for that condition?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: Are the same answers you gave as to the
11 medications for PTSD and anxiety, do those same answers apply
12 as to the medications you are on for the other conditions?

13 In other words --

14 THE DEFENDANT: (Unintelligible).

15 THE COURT: -- you can reason, listen, understand,
16 with clarity while you are taking those medications?

17 THE DEFENDANT: Yes.

18 THE COURT: In the past 24 hours, other than the
19 prescription medications that you referred to -- other than
20 those -- have you taken any drugs, medicine, or pills or drunk
21 new alcoholic beverages?

22 THE DEFENDANT: No.

23 THE COURT: Is your mind clear today?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand what is happening in

1 this proceeding?

2 THE DEFENDANT: Of course.

3 THE COURT: Mr. Silverman, you spent a great deal of
4 time with your client. Do you have any doubt as to your
5 client's competence to plead at this time?

6 MR. SILVERMAN: No, your Honor.

7 THE COURT: Ms. Karmigios, I know you have spent a lot
8 of time as the lead prosecutor in this proceeding, do you have
9 any doubt about Mr. Celli's competence to plead at this time?

10 MS. KARMIGIOS: No, your Honor.

11 THE COURT: I have had extensive access to Mr. Celli
12 since this matter was reassigned to me. Among other things, I
13 have reviewed with care the entire history of the case
14 preceding my appointment. I have presided over numerous
15 conferences. Some by video. The most recent ones by phone. I
16 have also questioned Mr. Celli at length *in camera* in
17 connection with for Faretta hearing that we recently held. I
18 have reviewed the reports, finding him competent it stand
19 trial. In particular, I am referring to the report by
20 Dr. Rosenfeld.

21 Based on Mr. Celli's responses today, based on his
22 demeanor today, based on all the materials that I have read and
23 importantly based on counsel's independent assessments of this
24 point, I find that Mr. Celli is competent to enter a plea of
25 guilty at this time.

1 Mr. Celli, have you had a sufficient opportunity to
2 discuss your case with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you had a sufficient opportunity to
5 discuss the charge to which you intend to plead guilty, any
6 possible defenses to that charge, and the consequences of
7 entering a plea of guilty?

8 THE DEFENDANT: We discussed but not to my
9 satisfaction, yes.

10 THE COURT: Would you like more time to speak with Mr.
11 Silverman about those matters?

12 THE DEFENDANT: No.

13 THE COURT: I want to just pause because you said not
14 to your satisfaction. It is important to me that you have had
15 sufficient time with your lawyer to discuss these matters
16 before you enter a plea of guilty.

17 Do you want to take a moment with Mr. Silverman now?

18 THE DEFENDANT: No. That's fine. I don't need to.

19 THE COURT: Mr. Silverman.

20 MR. SILVERMAN: Can I have one moment, please, your
21 Honor?

22 (Pause)

23 THE DEFENDANT: I am satisfied.

24 THE COURT: You're satisfied in fact you have had
25 enough time with Mr. Silverman?

1 THE DEFENDANT: Yes.

2 THE COURT: Are you satisfied with Mr. Silverman's
3 representation of you, including in connection with reaching
4 this plea agreement?

5 THE DEFENDANT: Yes.

6 THE COURT: I am now going to explain certain
7 constitutional rights that you have. You'll be giving up these
8 rights if you enter a plea of guilty. Mr. Celli, what I am
9 going to do is go one by one and ask you a yes-or-no question
10 after each one.

11 Under the Constitution and laws of the United States,
12 you are entitled to a speedy and a public trial by a jury on
13 the charge contained in the indictment.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At that trial you would be presumed to be
17 innocent. The government would be required to prove you guilty
18 by competent evidence and beyond a reasonable doubt before you
19 could be found guilty. You would not have to prove that you
20 were innocent. A jury of 12 people would have to agree
21 unanimously that you were guilty.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: At that trial and at every stage of your
25 case, you would be entitled to be represented by an attorney.

1 If you could not afford one, one would be appointed to
2 represent you free of charge.

3 Do you understand that?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: During the trial the witnesses for the
6 government would have to come to court and testify in your
7 presence and your lawyer could cross-examine the witnesses for
8 the government, object to the evidence offered by the
9 government, and if you desire issue subpoenas, offer evidence,
10 and compel witnesses to testify on your behalf.

11 Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: At a trial, although you would have the
14 right to testify if you chose to do so, you'd also have the
15 right not to testify and no inference or suggestion of guilt
16 could be drawn to the fact that you did not testify if that was
17 what you chose to do.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: At trial the government would have to
21 prove each and every part or element of the charge beyond a
22 reasonable doubt for you to be convicted of that charge.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that if you were

1 convicted at a trial, you would then have the right to appeal
2 that verdict?

3 THE DEFENDANT: Yes.

4 THE COURT: And on that appeal were you convicted at
5 trial, you would also have to the right to challenge the
6 various pretrial rulings I have made. For example, as to which
7 evidence will be received at trial and which evidence will be
8 included at trial.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Even at this time, right now, even as you
12 are in the process of entering this guilty plea, you have the
13 right to change your mind, plead not guilty, and go to trial.

14 Do you understand that?

15 THE DEFENDANT: I do.

16 THE COURT: If you plead guilty and I accept your
17 plea, you will give up your right to a trial and the other
18 rights that I have just described. There will be no trial and
19 I will enter a judgment of guilty and sentence you on the basis
20 of your guilty plea after considering the submissions relating
21 to sentencing that I receive from you and Mr. Silverman and the
22 government as well as a presentence report prepared by the
23 Probation Department.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: If you plead guilty, you'll also have to
2 give up your right not to incriminate yourself because today I
3 will ask you questions about what you did in order to satisfy
4 myself that you are guilty as charged.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Celli, have you received a copy of the
8 indictment containing the charge against you?

9 THE DEFENDANT: It was given to me right now, but I
10 have it somewhere in my house, too.

11 THE COURT: What is important to me is that you have
12 received it?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you read it?

15 THE DEFENDANT: Of course.

16 THE COURT: Have you discussed it with Mr. Silverman?

17 THE DEFENDANT: I discussed it with Mr. Scalavera.

18 THE COURT: Have you also discussed the indictment
19 with Mr. Silverman?

20 THE DEFENDANT: Yeah. To a certain extent, yeah.

21 THE COURT: Have you discussed it sufficiently with
22 Mr. Silverman that you understand the nature of the charges
23 against you?

24 THE DEFENDANT: I mean, I discussed it with
25 Mr. Scalavera. It is what it is. He just went over it. I

1 know.

2 THE COURT: Look, I appreciate it that you've
3 discussed it with others, but for the purposes of today--

4 THE DEFENDANT: Then, yes. I discussed it with him.

5 THE COURT: You've discussed it with Mr. Silverman?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that you are charged in
8 the one count in the indictment with violating a statute whose
9 number is 18, United States Code, Section 875(c), which
10 involves the transmittal in interstate or foreign commerce of
11 threats to injure a person of another; do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Ms. Karmigios, can you please slowly and
14 distinctly set out the elements of that offense?

15 MS. KARMIGIOS: Yes, your Honor.

16 The government would have to prove three elements
17 beyond a reasonable doubt:

18 First, that the defendant threatened to injure another
19 person.

20 Second, that the theft was transmitted in interstate
21 commerce.

22 Third, that the defendant transmitted a threat
23 knowingly and intentionally.

24 Additionally the government would have to prove venue
25 in the Eastern District of New York by a preponderance of the

1 evidence.

2 THE COURT: And in light of the Elonis case, which
3 construed that statute when we discuss the intent that is
4 required, does the government agree that the threat would have
5 to be made with either the purpose of issuing a threat or to
6 acknowledge that the communication could be viewed as a threat?

7 MS. KARMIGIOS: Yes, your Honor, that's correct.

8 THE COURT: Mr. Silverman, do you agree with the
9 government's articulation of the elements of that offense as
10 amplified by the Court?

11 MR. SILVERMAN: Yes, your Honor.

12 THE COURT: Mr. Celli, did you hear what Ms. Karmigios
13 said in setting out the elements --

14 THE DEFENDANT: I read the case.

15 THE COURT: Sorry.

16 Mr. Celli, just because we have a court reporter, you
17 always need to wait until I am done speaking before answering
18 even though I appreciate you likely anticipate correctly where
19 I am going.

20 So just to back up, did you hear what Ms. Karmigios
21 said as to the elements of the offense as amplified by me?

22 THE DEFENDANT: Yes.

23 THE COURT: I appreciate you've also done reading in
24 the area; but I will ask you just to focus on a specific
25 question.

1 Do you understand that if you were to go to trial, the
2 government would have to prove all of those elements beyond a
3 reasonable doubt?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand as well that the
6 government would have to prove venue in the Eastern District of
7 New York, although it would have to prove venue only by a
8 preponderance of the evidence?

9 THE DEFENDANT: Yes.

10 THE COURT: I am going to turn now to penalties and
11 the consequences of a guilty plea in this case.

12 Do you understand that the maximum possible penalty
13 for Count One is five years' imprisonment and that Count One
14 does not carry any minimum term of imprisonment?

15 THE DEFENDANT: Uh-huh, yes.

16 THE COURT: Sorry. I just need a yes or no.

17 THE DEFENDANT: Yes.

18 THE COURT: The maximum fine for -- I am calling it
19 Count One, but it is really the only count. The maximum fine
20 for Count One may reach the greatest of \$250,000, twice the
21 gross pecuniary gain derived from the offense, or twice the
22 gross pecuniary loss to people other than you as a result of
23 the offense.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: For pleading guilty you may receive up to
2 three years of what is called supervised release.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Supervised release refers to the period of
6 time after a person is released from prison and in your case
7 that includes the time you had previously served in pretrial
8 custody. So what I am about to say does not presuppose that I
9 will be sentencing you to additional prison. I don't want you
10 to take away from what I am about to say any premise one way or
11 another as to that.

12 Supervised release means that you will be subject to
13 monitoring when you are released from prison. There are terms
14 of supervised release with which a person must comply. If you
15 don't comply with them, you can be returned to prison without a
16 jury trial for all or part of the term of supervised release
17 imposed by the Court. Under those circumstances, you would not
18 be given any credit towards that term for the time you served
19 in prison as a result of your sentence for this crime nor would
20 you necessarily be given any credit towards that term for any
21 time you already spent on postrelease supervision.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: For pleading guilty to this crime, you
25 will be required to pay a mandatory \$100 special assessment.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: For pleading guilty to this crime, you may
4 be required to pay restitution to any person injured as a
5 result of your criminal conduct.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Government, I take it this is not a case
9 in which forfeiture is a relevant concept; correct?

10 MS. KARMIGIOS: That's correct, your Honor.

11 THE COURT: Mr. Celli, do you also understand that if
12 I accept your guilty plea and adjudge you guilty that may
13 deprive you of valuable civil rights such as the right to vote,
14 the right to hold public office, the right to serve on a jury,
15 and the right to possess any kind of firearm?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you a United States citizen?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: Under current law there are sentencing
20 guidelines as well as other factors set forth in the sentencing
21 statutes that judges are required to consider in determining
22 what a just and reasonable sentence is.

23 Do you understand that?

24 THE DEFENDANT: I do.

25 THE COURT: Have you spoken with Mr. Silverman about

1 the sentencing guidelines and those other factors?

2 THE DEFENDANT: I did.

3 THE COURT: Do you understand that I will not be able
4 to determine the guideline range that will form one part of my
5 determination of what a reasonable sentence will be in your
6 case until after a presentence report has been prepared and
7 until after you and your attorney and the government have all
8 had an opportunity to challenge any of the facts contained in
9 that report?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that even though the
12 government has represented in the plea agreement that it
13 presently calculates the sentencing guidelines to recommend a
14 sentence of between 24 and 30 months' imprisonment provided you
15 plead guilty on or before May 12th, 2021, that calculation of
16 the guidelines range is not binding on the Probation Department
17 and it is not binding upon the Court.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: Do you understand that even after the
21 Court has determined what guideline range applies to your case,
22 the Court has the discretion under the current law to impose a
23 sentence that is higher or lower than the one recommended by
24 the sentencing guidelines?

25 THE DEFENDANT: I do.

1 THE COURT: Do you understand that even though the
2 government has agreed in the plea agreement not to impose the
3 defendant's request for a sentence of time-served with a
4 two-year term of supervised release under certain specified
5 conditions, the Court is not bound by that agreement?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: In other words, I will consider carefully
8 and with great respect the parties' submissions and the
9 government's decision not to oppose a sentence of time-served;
10 but in the end the Court is not bound by the government's
11 position with respect to sentencing.

12 Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: Do you understand that if your attorney or
15 anyone else has attempted to predict what your sentence will
16 be, their prediction could be wrong. No one -- not your
17 attorney, not the government's attorney -- no one can give you
18 any assurance of what your sentence will be --

19 THE DEFENDANT: I --

20 THE COURT: Just one moment.

21 -- because I am going to decide your sentence. And I
22 am not going to that now and I really can't do that now.
23 Instead, I have to wait. I have to wait until I receive the
24 presentence report that is prepared by the Probation
25 Department. I am going to wait until I receive what I know

1 will be a very thoughtful sentencing submissions from the
2 defense and from the government. I am going to study those
3 materials very carefully.

4 Most of all, Mr. Celli, I am going to determine what a
5 just and reasonable sentence is for you based on all of the
6 factors contained in the sentencing statute, which is known as
7 Section 3553(a).

8 Do you understand all that?

9 THE DEFENDANT: Yes. It is up to your discretion.

10 THE COURT: But you understand what I have just said?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you discussed these issues and the
13 overall sentencing process with Mr. Silverman?

14 THE DEFENDANT: Yes.

15 THE COURT: Even if your sentence is different from
16 what your attorney or anyone else has told you it might be,
17 even if it is different from what you expect, even if it is
18 different from the guideline range that is calculated in the
19 plea agreement that you have with the government, or the
20 time-served recommendation that is reflected as the defense
21 recommendation in the plea agreement, even if it is different
22 from any or all of those things, you would still be bound by
23 your guilty plea and you would not be allowed to withdraw your
24 plea of guilty.

25 Do you understand that?

1 THE DEFENDANT: I knew that, yes.

2 THE COURT: Sorry. I didn't hear.

3 THE DEFENDANT: I knew that already, yes.

4 THE COURT: Very good.

5 Has anyone threatened you or anyone else or forced you
6 in any way to plead guilty?

7 THE DEFENDANT: Not physically, no. No.

8 THE COURT: Sorry. I want to make sure.

9 THE DEFENDANT: No.

10 THE COURT: You orally indicated there had been a plea
11 agreement entered into between you and your counsel and counsel
12 for the government. I am going to turn to that now. I am
13 looking at Government Exhibit 1.

14 Ms. Karmigios, I see on page 7 what appear to be your
15 signatures and the signature of Nadia Jihada, a supervising
16 assistant United States attorney.

17 Are those your respective signatures?

18 MS. KARMIGIOS: Yes.

19 THE COURT: I would note that there is no date filled
20 in here on the agreement, but I take it I am at liberty to put
21 in today's date?

22 MS. KARMIGIOS: Yes, your Honor. Thank you.

23 THE COURT: Mr. Silverman, I see here what appears to
24 be your signature.

25 Is that indeed your signature of today?

1 MR. SILVERMAN: Yes, your Honor.

2 THE COURT: Mr. Celli, I see hear what appears to be
3 your signature.

4 Is that your signature --

5 THE DEFENDANT: Yes, it is, your Honor.

6 THE COURT: -- signed today?

7 Mr. Celli, did you read this agreement before you
8 signed it?

9 THE DEFENDANT: I did read it.

10 THE COURT: Did you discuss it with your attorney
11 before you signed it?

12 THE DEFENDANT: I did and I discussed it with my
13 brother and my family, yes.

14 THE COURT: Wonderful.

15 Did you believe you understood the agreement at the
16 time you signed it

17 THE DEFENDANT: Of course.

18 THE COURT: Did you willingly sign this agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Did anyone force you to sign it?

21 THE DEFENDANT: No.

22 THE COURT: Do you have any agreement with the
23 government about your plea or your sentence that has been
24 omitted, that has been left out of this written agreement?

25 THE DEFENDANT: No.

1 THE COURT: Ms. Karmigios, would you kindly summarize
2 the material terms of the plea agreement. Again, slowly and
3 distinctly for the benefit of everybody.

4 MS. KARMIGIOS: Yes, your Honor.

5 This is an 11(c)(1)(B) plea agreement as you have
6 noted throughout the proceedings today. The defendant has
7 agreed to plead guilty to the sole count of the indictment,
8 which charges the transmission of interstate threats to injure
9 Jane Doe and John Doe, whose identities were known to the grand
10 jury and are known to the defendant on or about November 12th,
11 2018. The agreement, as you also noted, sets forth the
12 government's guidelines calculation, which is 24 to 30 months
13 of imprisonment with a three-level reduction for acceptance of
14 responsibility. That is based on a total adjusted offense
15 level of 17 and a criminal history category of one.

16 Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the
17 government has agreed not to appose the defendant's request for
18 a time-served sentence of imprisonment and two years of
19 supervised release with all of the standard conditions of
20 release and the special conditions identified in paragraphs 2 A
21 through 2 H. The defendant in turn agrees that he will not
22 have the right to withdraw the plea if the Court imposes a
23 different sentence of imprisonment, a different term of
24 supervised release, or different conditions of supervised
25 release.

1 The defendant also agrees that he will not be entitled
2 to withdraw his plea if the guidelines calculation determined
3 by the Court is different than those that I have laid out.

4 Finally, the defendant agrees not to file an appeal or
5 otherwise challenge his conviction or sentence in the event the
6 Court imposes a term of imprisonment of 33 months or below.

7 THE COURT: Thank you, Ms. Karmigios.

8 Mr. Silverman, are you in agreement with the
9 government's summary of the terms that government counsel
10 addressed?

11 MR. SILVERMAN: Yes, your Honor.

12 THE COURT: Mr. Celli, did you hear and understand Ms.
13 Karmigios as she set out those terms?

14 THE DEFENDANT: Yes.

15 THE COURT: A couple of items here that I just want to
16 draw your attention to. As the prosecutor just stated, the
17 government takes the position that the guidelines call for a
18 term of imprisonment of between 24 and 30 months' imprisonment.
19 Again just to reinforce, do you understand that that position
20 by the government does not bind the Court; I have to make my
21 own calculation of how the guidelines apply?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that under the agreement
24 you are giving up your right appeal or otherwise challenge your
25 sentence so long as I don't sentence you to more than 33 months

1 in prison?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone made any promise or done
4 anything other than what is contained in the plea agreement to
5 induce you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Has anyone made a promise to you as to
8 what your sentence will be?

9 THE DEFENDANT: No.

10 THE COURT: Do you still wish to plead guilty pursuant
11 to this agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Celli, we're now up to that point
14 where I am about to ask you to tell me in your own words what
15 it is that you did that makes you believe you are guilty of the
16 one charge in the indictment.

17 Before I ask you that let me ask Mr. Silverman whether
18 Mr. Celli will be consulting a writing as he answers that
19 questions?

20 MR. SILVERMAN: He will be, your Honor.

21 THE COURT: That is more than fine.

22 Mr. Celli, I just need to confirm with you before you
23 start to speak that you have already reviewed what is written
24 in front of you and that you're confident that everything in
25 there is accurate?

1 THE DEFENDANT: For the most part, yes.

2 THE COURT: Would you take a moment with Mr.
3 Silverman --

4 THE DEFENDANT: Yes. Yes.

5 THE COURT: One moment.

6 I need to make sure that it is not "for the most
7 part," but that in its entirety everything you are going to say
8 to me is truthful and accurate. You are under oath. I need to
9 make sure that if you are going to be reading from a document,
10 what is written there is something that you are confident is
11 true.

12 (Pause)

13 THE DEFENDANT: I don't remember this email so...

14 THE COURT: Take a moment, Mr. Silverman.

15 (Pause)

16 MR. SILVERMAN: We're ready to proceed, your Honor.
17 Thank you.

18 THE COURT: Mr. Celli, I just want to make sure is
19 everything you are about to read from as you answer the
20 question I just put to you, are you confident it is all
21 accurate?

22 THE DEFENDANT: Yes.

23 THE COURT: So then the question to you is: Tell me
24 in your own words what you did that makes you believe you are
25 guilty of the charge in the indictment.

1 I will ask you to speak slowly and distinctly for the
2 benefit of the court reporter.

3 THE DEFENDANT: On November 12th, 2018, emailed
4 people, including two judges in the Eastern District of New
5 York, an email stating --

6 THE COURT: Mr. Celli, you are doing great. Slow it
7 down a little more. I think the last word that the court
8 reporter got down is "Eastern District of New York."

9 THE DEFENDANT: I apologize.

10 THE COURT: Nothing to apologize for.

11 Go ahead.

12 THE DEFENDANT: *Katzmann, Steward, if I hurt anyone,*
13 *it is on you because you want to cover up their crimes.*
14 *Meaning (unintelligible). I promise that I kill them if you*
15 *don't address the crimes against me, motherfuckers.*

16 I intended that they would -- they were -- oh, sorry.

17 I intended that they would be frightened and alarmed
18 so I can get an answer. I knew this was wrong.

19 THE COURT: All right. Thank you, Mr. Celli.

20 Let me confirm with the court reporter that you were
21 able to take down all the words used by Mr. Celli?

22 OFFICIAL REPORTER: I didn't get the words before *I*
23 *promise that*, your Honor.

24 THE COURT: Mr. Silverman, could you just reorient
25 Mr. Celli to that point in the allocution?

1 THE DEFENDANT: It says, *I intended*.

2 MR. SILVERMAN: If I may, your Honor. There was a
3 deviation from the content of the email where Mr. Celli
4 explained that what he meant by *their crimes* what was he was
5 referring to Judge Cogan and Judge Brodie.

6 THE COURT: Is that correct, Mr. Celli?

7 THE DEFENDANT: Yes, it is.

8 THE COURT: Very helpful.

9 Mr. Celli, I just need to follow up with just a couple
10 questions.

11 The email was sent to two judges who sit in the
12 Eastern District of New York; is that correct?

13 THE DEFENDANT: They were sent to many judges.

14 THE COURT: Right. The judges in question sit in the
15 Eastern District of New York, correct, Judges Brodie and --

16 THE DEFENDANT: Yes. And also Katzmann and Stewart.

17 THE COURT: You understand that some of the recipients
18 of your email are judges in the Eastern District of New York;
19 is that correct?

20 THE WITNESS: And the Court of Appeals.

21 THE COURT: Very good.

22 When you sent the email, you said that you intended
23 that they would be frightened and alarmed so that you would get
24 an answer; correct?

25 THE DEFENDANT: Yes.

1 THE COURT: You understood therefore that your
2 communication would be perceived by the recipients as a threat;
3 correct?

4 THE DEFENDANT: Yes.

5 THE COURT: When you did these acts, did you know that
6 what you were doing was wrong?

7 THE DEFENDANT: No.

8 Well, yeah.

9 There's a --

10 THE COURT: Why don't you take a moment with Mr.
11 Silverman.

12 (Pause)

13 THE DEFENDANT: So this is actually the truth. I was
14 warned not to email judges and I continued.

15 THE COURT: You understood that it was wrong to email
16 those threats to the judges?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you understand that by emailing a
19 threat to injure the persons of those judges, you were
20 committing a crime?

21 THE DEFENDANT: Yes.

22 THE COURT: Does government counsel agree that there
23 is a sufficient factual predicate for a guilty plea?

24 MS. KARMIGIOS: Your Honor, there are three additional
25 emails that are charged in this case that I am prepared to

1 proffer details about, and I believe that the defendant is
2 willing to stipulate to sending if we may.

3 THE COURT: I am happy for you to do that, but just
4 before you do, you agree that even without those emails what
5 Mr. Celli has stated in open court under oath now supplies a
6 sufficient factual predicate for a guilty plea?

7 MS. KARMIGIOS: Yes, your Honor, with the added piece
8 that the government would introduce evidence that the email was
9 transmitted through a server that is located outside the state
10 of New York, and I believe that the defense would also
11 stipulate to that.

12 THE COURT: Mr. Silverman, is that factually correct?

13 MR. SILVERMAN: Yes, your Honor, we so stipulate.

14 THE COURT: And, Mr. Celli, is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Go ahead, Ms. Karmigios. I am happy for
17 you to amplify the record.

18 MS. KARMIGIOS: As I noted, there are three additional
19 emails charged in this case other than the one that the
20 defendant just allocuted to. The first was sent on
21 November 12th, 2018, from the email address ENVO0MAD@AOL.com.
22 It was at approximately 6:56 p.m. and it starts with the words,
23 *Brodie and Cogan, you --* expletive that I won't say.

24 The second email --

25 THE COURT: Ms. Karmigios, given the nature of the

1 case, you have dispensation to state the expletive. It is
2 relevant context here and I'd rather the record be complete.

3 MS. KARMIGIOS: Thank you, your Honor.

4 It states, *Brodie and Cogan, you motherfuckers*, and
5 continues on. would your Honor, like me to read the entirety?

6 THE COURT: Yes.

7 MS. KARMIGIOS: *You sent the U.S. Marshals and they*
8 *threatened my DUI case. Fraud upon the Court. I spent all*
9 *night reading, but I can't file in court like a normal person.*
10 *I have to fuck stab you to get justice.*

11 The second email was sent on November 12th, 2018, from
12 the same email address at approximately 7:00 p.m. That one
13 read, *Katzmann and Steward, either you deal with the U.S.*
14 *Marshal threat from Brodie and Cogan, or I hunt them down and*
15 *kill them. Because they want to act like the mafia, they have*
16 *to die like the mafia.*

17 The third email was sent also on November 12th, 2018,
18 from the same email address at approximately 7:07 a.m. It
19 read, *Katzmann and Steward, you both are fucking provoking me*
20 *by not answering. They sent and carried out their threat and*
21 *now either you deal with it or I kill them.*

22 THE COURT: Thank you, Ms. Karmigios.

23 Mr. Silverman, factually is it disputed that those
24 emails were sent by your client?

25 MR. SILVERMAN: No, your Honor.

1 THE COURT: Mr. Celli, same answer?

2 THE DEFENDANT: Yes.

3 THE COURT: When you sent those additional emails, did
4 you have the same intention and state of mind that you
5 testified to a moment ago as to the email you addressed?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Silverman, do you agree that there is
8 a sufficient factual predicate for a guilty plea?

9 MR. SILVERMAN: Yes, your Honor.

10 THE COURT: Mr. Silverman, do you know of any valid
11 defense that would prevail at trial or any reason why your
12 client should not be permitted to plead guilty?

13 MR. SILVERMAN: No, your Honor.

14 THE COURT: Mr. Celli, are you pleading guilty
15 voluntarily and of your own free will and because you are in
16 fact guilty?

17 THE DEFENDANT: Yes.

18 THE COURT: Can government counsel represent that had
19 the case gone to trial, it had sufficient evidence of each
20 element to establish a conviction?

21 MS. KARMIGIOS: Yes, your Honor.

22 THE COURT: Mr. Celli, because you acknowledge that
23 you are in fact guilty as charged in the indictment, because I
24 am satisfied that you know of your rights including your right
25 to go to trial, because I am satisfied that you are aware of

1 the consequences of your plea including the sentence that may
2 be imposed, and because I find that you are voluntarily
3 pleading guilty, I accept your guilty plea and enter a judgment
4 of guilty on the one count to which you have pled.

5 Now, Mr. Celli, the next phase of your case is going
6 to involve the sentencing process and I want you to listen
7 closely and attentively to what I am about to say. The
8 Probation Department is going to want to interview you in
9 connection with the presentence report that it will prepare.
10 If you choose to speak with the Probation Department, please
11 make sure that anything you say to them is truthful and
12 accurate. That is because I read those reports carefully.
13 Along with the sentencing submissions that I receive from the
14 parties, they are important to me. They help form my judgment
15 about what a reasonable and just sentence is in a particular
16 case. You and your counsel have the right to examine the
17 report and to comment on it at the time of sentencing. I urge
18 you to read it carefully and to discuss it with Mr. Silverman
19 before sentencing. If there are any mistakes in the report,
20 please point them out to Mr. Silverman so that he can bring
21 them to my attention before sentencing.

22 Will you agree to do that?

23 THE DEFENDANT: Yes.

24 THE COURT: More broadly, please work closely and
25 collaboratively with Mr. Silverman during the sentencing

1 process. I am well aware that this is a complicated case and I
2 am very much mindful of your journey and the challenges that
3 you have faced. I am very eager and interested in learning
4 about you and understanding the context not just about the
5 threats that we just talked about but your life that proceeds
6 it. That is a great interest to me and I will be enormously
7 benefited by your working closely with Mr. Silverman so that he
8 can help develop that context for me.

9 Will you agree to do that?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Silverman, I take it under the
12 circumstances with your client not being in custody and there
13 being a pandemic afoot in the land, this is not a case in which
14 you are seeking an expedited sentence; correct?

15 MR. SILVERMAN: I am not, your Honor.

16 THE COURT: Counsel, how about Tuesday, August 17th at
17 10:30 for sentencing?

18 MS. KARMIGIOS: That's fine for the government, your
19 Honor.

20 MR. SILVERMAN: That's fine for the defense, your
21 Honor, with the caveat that I may -- though, it is not
22 confirmed -- have a trial before Judge Caproni that week. So I
23 am happy to schedule it, but if I need to request a short
24 adjournment --

25 THE COURT: Well, if you request a short adjournment,

1 it will be granted but I would ask you to let us know as soon
2 as possible just for everybody's scheduling needs. So as soon
3 as you have a sense.

4 Look, the other thing we can do is simply right now do
5 a week later. There is no harm in doing that. Would that
6 precure that problem?

7 MR. SILVERMAN: Your Honor, if the trial is scheduled
8 that week -- your Honor may know better than I how the district
9 is scheduling trials at the moment -- that would make my
10 sentencing submission due mid trial. So I would request that
11 it be the week after Labor Day if at all possible or the week
12 of August 30th.

13 THE COURT: Why don't we put it down for the week of
14 August 30th.

15 Mr. Smallman.

16 How about Thursday, September 2 at 10:30?

17 Government, does that work for you?

18 MS. KARMIGIOS: Your Honor, with apologies. I am
19 supposed to be out of the city that day.

20 THE COURT: Why don't we do this: Mr. Silverman,
21 let's go back to August 17th. Hopefully that will work. If
22 there is a conflict, you will promptly move for an adjournment
23 and I will grant it.

24 MR. SILVERMAN: Thank you, your Honor.

25 THE COURT: Tuesday, August 17th at 10:30.

1 Mr. Karmigios, I am of course not going to schedule
2 this at a time that presents a personal inconvenience. You can
3 rest assured that if I need to move it, I am not going to move
4 it at a time that you are unavailable.

5 MS. KARMIGIOS: I appreciate that, your Honor.

6 THE COURT: As to sentencing, Mr. Silverman, you must
7 arrange for your client to be interviewed if he is going to be
8 interviewed by the Probation Department within the next two
9 weeks. I strongly encourage defense counsel to be present.

10 And, Mr. Silverman, I take it you are requesting to be
11 present?

12 MR. SILVERMAN: Yes, your Honor.

13 THE COURT: Government, you should provide your case
14 summary to the Probation Department again within the next two
15 weeks.

16 MS. KARMIGIOS: Yes, your Honor.

17 THE COURT: In connection with sentencing, defense
18 submissions are due two weeks before sentencing and the
19 government's submission is due one week beforehand. There are
20 procedures that the Court has for the filing of sentencing
21 submission. I am mindful of this case there may be medical or
22 mental health dimensions to the filings that are properly
23 redacted, and I of course authorize matters like that to be
24 filed with the discrete items that are properly redacted.

25 So, Mr. Silverman, you don't need to seek leave for

1 that; but I do expect you to carefully tailor any redactions to
2 only that which are properly redacted.

3 MR. SILVERMAN: Understood, your Honor.

4 THE COURT: Ms. Karmigios, I need to ask about the
5 defendant's bail status. Is there any objection to Mr. Celli's
6 present bond being continued up through the date of sentence?

7 MS. KARMIGIOS: No, your Honor.

8 THE COURT: Mr. Celli, do you understand that all of
9 the conditions under which you have been released up until now
10 continue to apply and that a violation of any of those
11 sentences can have very serious consequences for you at the
12 time of sentencing?

13 THE DEFENDANT: Yes.

14 THE COURT: Look, to state the obvious the period
15 between now and sentencing is an important one for you. I will
16 be eager to understand how you have conducted yourself during
17 that period. It is very, very much in your interest to --

18 THE DEFENDANT: Behave.

19 THE COURT: -- punctiliously comply with all the
20 conditions of release between now and sentencing.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 Yes, your Honor.

24 THE COURT: You must be in my courtroom -- in a moment
25 I will discuss where that will be -- that is set for sentencing

1 at the time and date that I have set or you will be guilty of a
2 separate crime known as bail jumping and subject to a fine
3 and/or a prison term in addition to whatever sentence you
4 receive for the crime that you have just pled guilty to.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, as to that, Mr. Silverman, again
8 Mr. Celli has the right to have the sentencing proceed in the
9 Eastern District of York, but it may be something that you want
10 to confer with your client about.

11 THE DEFENDANT: It can be here.

12 THE COURT: There you go.

13 Mr. Silverman, we might as well address that well.
14 Are you comfortable agreeing to have the sentencing occur in
15 this district as the plea did?

16 MR. SILVERMAN: Yes, we consent, your Honor.

17 THE COURT: Mr. Celli, is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: Government, do you also consent?

20 MS. KARMIGIOS: Yes, your Honor.

21 THE COURT: Look, Mr. Silverman, in the event
22 Mr. Celli wishes to withdraw his consent to that in the Eastern
23 District, I am not in any way precluding an application along
24 those lines; but if there is silence on that point, I am going
25 to take his consent as durable. Meaning, we'll hold the

1 sentencing in this courtroom.

2 MR. SILVERMAN: We understand. Thank you, your Honor.

3 THE COURT: Very good.

4 Anything further from the government?

5 MS. KARMIGIOS: No, your Honor.

6 THE COURT: Anything further from the defense?

7 MR. SILVERMAN: No, your Honor. Thank you for
8 scheduling this.

9 THE COURT: Let me take a moment to commend everybody
10 here. I want to commend counsel for the thoughtful process
11 that resulted in this agreement and for the high quality
12 advocacy that I have been privileged to received in writing and
13 orally during the months beforehand.

14 Mr. Celli, I want to commend you. It has been obvious
15 to me, in particular in the last several proceedings, how
16 focused and attentive you have been and how much you are
17 endeavoring to follow the rules here and consult in good faith
18 with your lawyer in your best interest.

19 THE DEFENDANT: Thank you, your Honor.

20 THE COURT: I am very happy to see that the
21 constructive way in which you are engaging with your counsel in
22 this process.

23 THE DEFENDANT: Thank you, your Honor.

24 THE COURT: To your mother I want to wish you well and
25 thank you for being here.

1 With that we stand adjourned. Be well, everyone

2 o0o

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25